

ESTTA Tracking number: **ESTTA573469**

Filing date: **11/27/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91212861
Party	Plaintiff FAIRMONT HOLDINGS, INC.
Correspondence Address	Kim Kolback Law Offices Of Kimberly Kolback 1395 Brickell Ave., Suite 800 Miami, FL 33131 UNITED STATES kim@kkolbacklaw.com
Submission	Answer to Counterclaim
Filer's Name	Kimberly Kolback
Filer's e-mail	kim@kkolbacklaw.com
Signature	/s/Kim Kolback/
Date	11/27/2013
Attachments	answer and affirmative defenses-counterclaim.pdf(31905 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK
OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

FAIRMONT HOLDINGS, INC.,
a Florida Corporation,

Opposer/Registrant,

vs.

BACARDI & COMPANY LIMITED,
a Liechtenstein Company,

Applicant/Petitioner.

Opposition No. 91212861
Application Serial No.: 85859951
Word Mark: DEWAR'S LIVE TRUE

ANSWER AND AFFIRMATIVE DEFENSES TO COUNTERCLAIM

Opposer/Registrant, Fairmont Holdings, Inc., by and through its undersigned counsel, responds to Applicant/Petitioner Bacardi & Company Limited's Petition For Cancellation as follows:

ANSWER

1. Opposer/Registrant is without knowledge as to the allegations contained within paragraphs 1, 3 and 4. Registrant therefore denies said paragraphs, and demands strict proof thereof.
2. Opposer/Registrant denies the allegations contained within paragraphs 2, 6, 7, 8 and 9 as stated, and demands strict proof thereof.
3. Opposer/Registrant admits paragraph 5.
4. Any allegation not specifically admitted herein is denied.

AFFIRMATIVE DEFENSES

Further answering Applicant/Petitioner's pleading, Opposer/Registrant states in the affirmative and the alternative as follows:

- A. Applicant/Petitioner fails to state a claim upon which relief may be granted.

- B. Applicant/Petitioner is estopped, by operation of law and by virtue of its conduct, from asserting its claim.
- C. Applicant/Petitioner, by virtue of its own conduct, waived its claim.
- D. Applicant/Petitioner is barred, by virtue of its conduct, from asserting its claim.
- E. Opposer/Registrant was and is in compliance with all federal statutory requirements and obligations in relation to Registration No. 4,222,657.
- F. Permitting Applicant/Petitioner to prevail in this proceeding would be contrary to public policy.

Registrant specifically reserves the right to allege additional affirmative defenses as they may present themselves during the discovery process.

Respectfully submitted:

Law Offices Of Kimberly Kolback
Attorney for Opposer/Registrant
1395 Brickell Avenue, Suite 800
Miami, FL 33131
Ph: 305-200-8786 / 305-858-2627 (direct)
Kim@kkolbacklaw.com

By: /s/ Kimberly Kolback/
KIMBERLY KOLBACK

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing is being submitted electronically, via the Electronic Filing System, with the Trademark Trial And Appeal Board, on November 27, 2013. I further hereby certify that a true and correct copy of the above and foregoing was served by U.S. Mail and email on November 27, 2013 upon: Jennifer DeArmond, Schneck & Schneck, P.O. Box 2-E, San Jose, CA 95109, dearmond@patentvalley.com.

By: /s/ Kimberly Kolback/
KIMBERLY KOLBACK